

Doc Code: AP.PRE.REQ

PTO/SB/33 (01-09)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 2003P03731WOUS											
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/519,139	Filed December 22, 2004											
	First Named Inventor Klaus Leuschner												
	Art Unit 2123	Examiner Sheela S. Rao											
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table border="0"><tr><td><input type="checkbox"/> applicant/inventor.</td><td>/Duane A. Stewart III/</td></tr><tr><td><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td>Signature Duane A. Stewart III</td></tr><tr><td><input type="checkbox"/> attorney or agent of record. Registration number _____</td><td>Typed or printed name 412-562-1622</td></tr><tr><td><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>54,468</u></td><td>Telephone number June 19, 2009</td></tr><tr><td></td><td>Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor.	/Duane A. Stewart III/	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Signature Duane A. Stewart III	<input type="checkbox"/> attorney or agent of record. Registration number _____	Typed or printed name 412-562-1622	<input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>54,468</u>	Telephone number June 19, 2009		Date
<input type="checkbox"/> applicant/inventor.	/Duane A. Stewart III/												
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	Date												
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.													

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/519,139
Applicant : Klaus Leuschner
Filed : December 22, 2004
Title : Ventilation Device

Group Art Unit : 2123
Examiner : Sheela S. Rao

Docket No. : 2003P03731WOUS
Confirmation No. 4510

Request for Pre-Appeal Brief Review

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is filed pursuant to the July 12, 2005 Notice in the Official Gazette entitled "New Pre-Appeal Brief Conference Pilot Program" and in accordance with the subsequent Notice of January 10, 2006 extending the pilot pre-appeal brief conference program until further notice. This paper is filed with a Notice of Appeal that is timely with the extension of time of one month that is included herewith. If extension and/or further payment is necessary to make this Appeal timely, kindly deduct the necessary amount from Deposit Account No. 02-4800, in the name of Buchanan Ingersoll PC.

Remarks

Claims 12, 13, 15-17, 20-23 and 25-28 are pending and stand rejected. Claim 12 is an independent claim. The remaining claims depend directly or cognately from claim 12.

Claims 12, 13, 15, 20-23, 25 and 27-28 stand rejected under 35 U.S.C. § 103(a) as purportedly unpatentable over U.S. Patent Application Publication No. US2003/0011332 A1 to *Mays, II*. As set forth more fully in pages 2-4 of Applicant's April 9, 2009 Response (incorporated by reference herein), this rejection should be withdrawn.

Mays, II does not teach or suggest all of the limitations of the claims. Claim 12 requires "a switching device connected in parallel with the control element, the circuitry configured to detect and respond to a fault in the fan unit by bypassing the control unit through connecting a switching device to power the fan unit at full operating voltage when a board temperature is greater than a board limit temperature...." *Mays, II* does not teach any of those elements.

Mays, II does not teach that the control unit is bypassed and the fan unit is operated at full operating voltage when a board temperature is greater than a board limit temperature. Instead, *Mays, II* requires that the temperature value be reported to an intermediary. *Mays, II* does not state that this intermediary (labeled 134 in Figure 4 of *Mays, II*) gives *any* instructions related to temperature. Even if the command interpreter of *Mays, II* did provide these instructions (which it does not), that would be significantly different from the claimed invention in which instructions are sent directly from the temperature sensor through the switching devices to the fan unit without recourse to an external control.

Mays, II requires that "All speed control, as well as on/off control, is communicated to the fan via the serial interface" (*Mays, II* at [0024]). The temperature sensor of *Mays, II* does not act to alter the voltage of the fan as claimed in this application. *Mays, II* does not teach or suggest altering the voltage to allow full operating voltage to be sent to the fan unit in the event of a board temperature greater than a board limit temperature.

In the Final Office Action of February 20, 2009, and the Advisory Action of May 12, 2009, the Examiner did not address the failure of *Mays, II* to teach or suggest all of the limitations of the claims. Instead, the Advisory Action and the Office Action merely focus on (and misinterpret) the location of the temperature sensor in *Mays, II* and in the instant application. As shown, for example, on pages 3-5 of the February 20, 2009 Final Office Action, the Examiner has emphasized placement of the sensors at the expense of considering their function. This is improper.

Neither *Mays, II* nor any of the other cited art includes the required claim elements of "a switching device connected in parallel with the control element, the circuitry configured to detect and respond to a fault in the fan unit by bypassing the control unit through connecting a switching device to power the fan unit at full operating voltage when a board temperature is greater than a board limit temperature...." Because these elements are neither taught nor suggested by the prior art, the rejection should be withdrawn and the claims allowed.

Conclusion

Applicant has demonstrated, both above and throughout the prosecution, that the rejections made in this case are improper. They should be withdrawn, and the claims should be

allowed. Finally, Applicant notes that failure to raise an argument in this document is not a waiver of that argument on appeal. Furthermore, failure to separately argue the patentability of one or more dependent claims should not be construed as an admission that the claims are not separately patentable. If communication with the undersigned might help resolve any outstanding issues with this application, the Examiners are invited to call the undersigned at the number below.

Respectfully submitted,

Buchanan Ingersoll & Rooney PC

Dated: June 19, 2009

/Duane A. Stewart III/

Duane A. Stewart III

Registration No. 54,468

Buchanan Ingersoll & Rooney PC

One Oxford Centre

301 Grant Street, 20th Floor

Pittsburgh, PA 15219-1410

Phone: 412-562-1622